

## **REMARKS**

The Office Action dated December 1, 2004, has been received and carefully noted. The following amendments to claims 49, 51, 53-43, 63, 65, 68, 70, 77 and 81, are submitted. Also submitted are new claims 82-84 to further define the scope of the present application. No new matter is being presented, and approval and entry are respectfully requested.

Support for new claim 82 can be found in numerous places in the application, for example page 10, line 35 to page 11, line 5. Support for claim 83 may be found, for instance, on page 14, line 35 to page 15, line 2. Claims 49-84 are currently pending in the present application.

Claims 49-84 are respectfully resubmitted for consideration.

### **OBJECTIONS TO THE CLAIMS:**

In the Office Action, at page 2, claims 49-81 were objected to because of minor informalities. Claims 49, 53, 54, 63, 65, and 77 have been amended to correct such minor informalities. Accordingly, it is respectfully requested that the objection to the claims be withdrawn.

### **REJECTION UNDER 35 U.S.C. § 112:**

In the Office Action, at page 2, claims 51, 68, 70, 71, and 81 were rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness.

In response, the claims have been amended to improve clarity and antecedent support.

Accordingly, it is respectfully requested that the § 112, second paragraph

rejections to the claims be withdrawn.

**REJECTION UNDER 35 U.S.C. § 102:**

*In the Office Action, at page 3, claims 49-56, 59-61, 63-65, 67-68 and 73-81 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,530,693 to Averbuch et al. ("Averbuch"). The Office Action took the position that Averbuch describes all the recitations of independent claims 49 and 77 and related dependent claims. This rejection is traversed and reconsideration is requested.*

Independent claim 49, upon which claims 50-76 are dependent, recites a method of transmitting packets of data in a communication network is provided including at least first to third stations. The method includes providing data packets to only the first station and sending a first number of the data packets from the first station to a second station, and subsequently providing the data packets to both said first and third station when the second station has at least one predefined parameter with respect to said first and third station. The method further includes identifying via said second station which of the first number of the data packets are correctly received by the second station from the first station, and responsive to a signal from said second station, sending a second number of the data packets from the third station to said second station commencing with a data packet identified in said signal as being required after the last correctly received packet received from the first station.

Independent claim 77, upon which claims 78-81 are dependent, recites a system of transmitting packets of data in a communication network including first, second and third

stations. The first station only is provided initially with data packets and is arranged to send a first number of the data packets to the second station. Subsequently the data packets are provided to both the first and third station when the second station has at least was predefined parameter with respect to the first and third station and wherein the second station is arranged to identify which of the first number of the data packets it receives from the first station. The third station is arranged to send a second number of the data packets to the second station in response to a signal from the second station commencing with the data packet identified in the signal as being required after the last correctly received packet from the first station.

Independent claim 82, upon which claims 83-84 are dependent, recites a node for a wireless communication network including a node configured to send data packets to a base station for transmission to a mobile station. The node is configured to start sending the data packets for transmission to the mobile station both to a first base station and a second base station as a response to a predetermined condition.

As will be discussed below, Averbuch fails to disclose or suggest the elements of any of the presently pending claims.

Averbuch generally describes a packet data routing network providing a packet of data from a data source (e.g., a land host computer) to at least two of the base sites, one of the base sites being the site currently serving the communication unit and the other base site or sites being possible handoff targets. See column 3, lines 18-23. A packet data router 101 receives a packet of the packet data communication from the land network and routes the packet to the appropriate base site controller (BSC) 103 based on the address

information provided in protocol layer 3 and the router's BSC routing list. See column 4, lines 23-31. The BSC 103 duplicates the data packet and sends the original data packet 117 to the base site 105 currently serving the communication unit 109 and packet copies 119, 121 to all possible handoff base sites 106, 107.

However, contrary to the assertions made in the Office Action, Averbuch fails to teach or suggest, at least, “providing data packets to only the first station and sending a first number of the data packets from the first station to a second station,” as recited in independent claim 49. Instead, Averbuch specifically provides that at least two base sites, a serving base site 105 and a target base site 106, receive the same data packet 117, 119 to be delivered to a communication unit 109, by dividing the data packet into identical data blocks 201-208. See column 5, lines 52-57. Thus, the data packets are not provided to only the serving base site 105 or to only the target base site 106, but the data packets must be provided to both, the serving base site 105 and the target base site 106.

In addition, Averbuch fails to teach or suggest, at least, “subsequently providing the data packets to both said first and third station when the second station has at least one predefined parameter with respect to said first and third station,” as recited in independent claim 49. Rather than providing each entire data packet or each data packet as a whole to both the serving base site 105 and the target base site 106 or to both the serving base site 105 and the communication unit 109, Averbuch fragments the data packets and each fragment is then transmitted to the communication unit 109. Thus, Averbuch fails to teach or suggest all the features recited in independent claim 49.

In addition, dependent claim 52 depends from independent claim 49 and recites the additional feature of “subsequent to said step of sending a second number of data packets providing data packets to only the third station.” Averbuch fail to teach or suggest that a second number of data packets are provided only to the target base site 106 or only to the target base site 107. Instead, Averbuch describes that the packet data routing network 101, 103 provides the fragmented data packet 201-208 to at least two of the base sites 105-107. See abstract. Averbuch does not teach or suggest sending “a second number of data packets,” but sends fragments of data packets 201-208. Similar arguments apply to support the patentability of dependent claim 53, which recites, “providing data packets to only the third station in response to said second station no longer having said at least one predefined parameter with respect to said first and third stations.”

Independent claim 77 recites, “wherein said first station only is provided initially with data packets and is arranged to send a first number of the data packets to the second station.” Because independent claim 77 includes similar claim features as those recited in independent claim 49, although of different scope, and because the Office Action refers to similar portions of the cited references to reject independent claim 77, the arguments presented above supporting the patentability of independent claim 49 are incorporated herein to support the patentability of independent claim 77.

Referring to new independent claim 82, this claim recites a node arranged “the node is configured to start sending the data packets both to a first base station and a second base station as a response to a predetermined condition for transmission to the

mobile station.” Averbuch is devoid of any teaching or suggestion of providing a node that is configured to send data packets to both, the serving base site 105 and the target base site 106. In addition, as previously indicated, Averbuch does not teach or suggest sending entire or whole data packets to at least two of the base sites (105-107). Instead, the data packets are fragmented and portions thereof are sent by the network to the at least two base sites (105-107). Accordingly, Averbuch fails to anticipate all the recitations of independent claim 82.

In view of the foregoing, it is respectfully requested that independent claims 1, 77, and 82 and related dependent claims be allowed.

**REJECTION UNDER 35 U.S.C. § 103:**

*In the Office Action, at page 6, claims 66 and 69-72 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Averbuch. The Office Action took the position that Averbuch discloses all the aspects of dependent claims 66 and 69-72. The rejection is traversed and reconsideration is requested.*

As will be discussed below, Averbuch fails to disclose or suggest the elements of any of the presently pending claims.

Dependent claims 66 and 69-72 depend from independent claim 49. Dependent claim 66 recites the additional feature of “wherein if said second station does not correctly receive a data packet, said second station requests retransmission of said data packet,” and dependent claim 69 recites, “said first station is in communication with a

first node and the third station is in communication with a second node, said first and second nodes being in communication with said common node.” In addition, dependent claim 70 recites the additional features of, “further comprising the step of: acknowledging receipt of a data packet at the third station, wherein the acknowledgement is forwarded to the common node by one of said first and second nodes and the common node advises the other of the first and second nodes that an acknowledgment has been received,” dependent claim 71 recites, “wherein the first station is connected to a first node and the third station is connected to a second node and one of the first and second nodes is arranged to be the common node and said acknowledged packet is forwarded to the common node,” and dependent claim 72 recites, “the first and second nodes and/or the first and third stations are connected together.” Because Averbuch must teach all the recitations of the base claim and any intervening claims of dependent claims 66 and 69-72, the arguments presented above supporting the patentability of independent claim 49 over Averbuch are incorporated herein.

The Office Action correctly recognized that Averbuch fails to teach or suggest the recitations of dependent claims 66 and 69-72. Accordingly, the Office Action conclusively presents the assertion that “it is well known in the art that a non-received packet must be re-transmitted in order to guarantee reliable data transfer.” However, as previously indicated, Averbuch fails to teach or suggest all the recitations of base claim independent claim 49. Accordingly, Applicants respectfully assert that in view of the description provided in Averbuch, a person of ordinary skill in the art would not have arrived to the recitations of dependent claims 66 and 69-72.

In addition, it is improper to merely deem something obvious without any teaching/suggestion, or the taking of Official Notice. "It is fundamental that rejections under 35 U.S.C. §103 must be based on evidence comprehended by the language of that section." See In re Lee 61 USPQ2d 1430 (CA FC 2002) (citing In re Grasselli, 713 F.2d 731, 739, 218 USPQ 769, 775).

If the U.S. Patent and Trademark Office wishes to take Official Notice that the proposed structural and functional modification is notoriously well known, Applicants respectfully request that supporting evidence be provided. The Federal Circuit has cautioned that an Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. In re Rouffet, 47 USPQ2d 1453, 1458 (Fed. Cir. 1998).

While "official notice" may be relied upon, as noted in MPEP §2144.03, these circumstances should be rare when an application is under final rejection or action under 37 CFR §1.113. Official Notice unsupported by documentary evidence should be only be taken by the Examiner where the facts asserted to be well known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known and only when such facts are of notorious character and serve only to "fill in the gaps" which might exist in the evidentiary showing made by the Examiner to support a particular ground of rejection.



“To support the conclusion that the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination. It is to be noted that simplicity and hindsight are not proper criteria for resolving the issue of obviousness.” Ex Parte Clapp, 227 USPQ 972, 973 (B.P.A.I. 1985). No such showing has been made in the present Office Action. It is submitted that the reason why no such showing was made is because Averbuch fails to teach, suggest, or otherwise provide the motivation needed to make such a modification.

In view of the foregoing, it is respectfully requested that independent claim 49 and related dependent claims 66 and 69-72 be allowed.

*In the Office Action, at page 6, claims 57 and 58 were rejected under 35 U.S.C. § 103 as being unpatentable in view of Averbuch and U.S. Patent No. 5,864,578 to Yuen (“Yuen”). The Office Action took the position that Averbuch and Yuen describe all the recitations of claims 57 and 58. The rejection is traversed and reconsideration is requested.*

As will be discussed below, Averbuch and Yuen fail to disclose or suggest the elements of any of the presently pending claims.

Dependent claims 57 and 58 depend from independent claim 49. Dependent claim 57 recites the additional feature of “wherein said signal parameter is the power level of a signal received at the second station from at least one of said first and third stations,” and dependent claim 58 recites, “wherein said signal parameter is the ratio of power level of signals received at that the second station from the first and third stations.” Because

Averbuch and Yuen must teach, individually or combined, all the recitations of the base claim and any intervening claims of dependent claims 57 and 58, the arguments presented above supporting the patentability of independent claim 49 over Averbuch are incorporated herein.

Yuen generally describes monitoring a first signal quality of a first received-spread-spectrum signal transmitted from a first base station 61. See column 20, lines 46-67, and column 21, lines 1-7. A monitoring at an output of a matched filter is for determining how well the signal is being received from the first base station 61, in order to ultimately make a decision as to whether to initiate a handoff. However, Yuen does not cure the deficiencies of Averbuch. Similarly to Averbuch, Yuen is silent as to teaching or suggesting, “providing data packets to only the first station and sending a first number of the data packets from the first station to a second station,” as recited in independent claim 49. Yuen and Averbuch, individually or combined, fail to teach or suggest all the recitations of independent claim 49.

Accordingly, it is respectfully requested that independent claim 49 and related dependent claims 57 and 58 be allowed.

*On page 6 of the Office Action, claim 62 was rejected under 35 U.S.C. § 103 as being unpatentable in view of Averbuch and U.S. Patent No. 6,438,116 to Corbett (“Corbett”). The Office Action took the position that Averbuch and Corbett describe all the recitations of claim 62. The rejection is traversed and reconsideration is requested.*

As will be discussed below, Averbuch and Corbett fail to disclose or suggest the elements of any of the presently pending claims.

Dependent claim 62 depends from independent claim 49. Dependent claim 62 recites the additional feature of “wherein said parameter is averaged over time before it is determined if said criteria is satisfied.” Because Averbuch and Corbett must teach, individually or combined, all the recitations of the base claim and any intervening claims of dependent claim 62, the arguments presented above supporting the patentability of independent claim 49 over Averbuch are incorporated herein.

Corbett generally describes regulating transmit power level for a mobile station following a hard handoff in a code division multiple access (CDMA) based system. See column 3, lines 21-40. Samples are obtained for the system controller to keep a first-in-last-out (FILO) type running buffer. See column 4, lines 39-56. However, Corbett does not cure the deficiencies of Averbuch. Similarly to Averbuch, Corbett is silent as to teaching or suggesting, “providing data packets to only the first station and sending a first number of the data packets from the first station to a second station,” as recited in independent claim 49. Corbett and Averbuch, individually or combined, fail to teach or suggest all the recitations of independent claim 49.

Accordingly, it is respectfully requested that independent claim 49 and related dependent claim 62 be allowed.


**CONCLUSION:**

In view of the above, applicant respectfully submits that the claimed invention recites subject matter which is neither disclosed nor suggested in the cited prior art. Applicants further submit that the subject matter is more than sufficient to render the claimed invention unobvious to a person of skill in the art. Applicants therefore respectfully request that each of claims 49-84.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the Applicants' undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, the applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

  
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